

REMARKS

Claims 1 through 5, 7 through 23 and 25 through 28 are pending in the present application. Applicants note with appreciation the fact that the Action states that claims 3, 8, 15 and 21 would be allowable if rewritten in independent form. As such, new claims 25 through 28 reflect claims 3, 8, 15 and 21 written in independent form. In addition, for at least the reasons set forth below, Applicants respectfully submit that the remaining claims are also in condition for allowance. Upon receipt and review of this Amendment, Applicant's attorney of record hereby requests an Examiner's Interview prior to further examination on the merits of the pending application.

Also filed herewith is a supplemental Information Disclosure Statement (IDS) prompted by references recently revealed during a pending litigation involving U.S. Patent No. 4,536,178 to Lichstein et al., the sole reference cited in claim rejections in the present Office Action (Action). In addition to the references cited in the supplemental IDS, Applicants also enclose expert reports prepared in advance of a Markman Hearing involving the '178 Lichstein et al. patent. Finally, a copy of the Markman Hearing decision is also enclosed, which sets forth the court's ruling on claim interpretation of the '178 Lichstein patent.

Claims 1, 2, 4, 5, 7, 9 through 14, 16 through 20, 22 and 23 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,536,178 to Lichstein et al. (Lichstein).

Lichstein discloses a tampon applicator with a tubular barrel adapted to house a tampon pledget and accommodate a slidable tubular plunger. The barrel includes a rear portion having two diametrically opposed, substantially flattened surfaces with gripping ribs thereon.

Claim 1 provides a tampon applicator having a barrel adapted to house a pledget therein and to receive a plunger therein. The barrel has a fingergrip area adapted to partially house and engage the plunger. The fingergrip area has at least one substantially flattened surface with at least one gripping structure selected from the group consisting of embossments other than ribs, slits, perforations, lances, pressure sensitive adhesive, and any combinations thereof. The fingergrip area has a reduced diameter relative to the barrel. The at least one substantially flattened surface and the at least one gripping structure provide gripping ability to overcome ejection forces applied to the barrel by the pledget and/or the plunger.

It is respectfully submitted that Lichstein fails to disclose a tampon applicator having at least one substantially flattened surface with at least one gripping structure selected from the group recited in claim 1.

Dependent claim 9 recites the tampon applicator of claim 1, wherein the at least one gripping structure is aligned with an outer surface of the at least one substantially flattened surface.

As noted above, Lichstein discloses ribs or treads, both of which clearly extend above the substantially flattened surface. Therefore, Lichstein fails to disclose any gripping structure that is aligned with the at least one substantially flattened surface, as recited in claim 9.

Applicants respectfully submit that Lichstein fails to disclose or suggest the tampon applicator recited in claim 1, and claims 2, 4, 5, 7 and 9 through 12, which depend either directly or indirectly from claim 1.

Independent claim 13 is directed to a tampon applicator having a barrel adapted to house a pledget therein, the barrel having a fingergrip area adapted to partially house and engage the plunger. The fingergrip area has at least one convex gripping surface with at least one gripping structure. The fingergrip area has a reduced diameter relative to the barrel. The at least one convex gripping surface and the at least one gripping structure provide gripping ability to overcome ejection forces applied to the barrel by the pledget and/or the plunger.

It is respectfully submitted that Lichstein fails to disclose or suggest a fingergrip area having at least one convex gripping surface with at least one gripping structure, as

recited in claim 13. Applicants respectfully assert that the rear portions 32 of the Lichstein applicator are not convex gripping surfaces, as recited in claim 13. Clearly, as depicted in Fig. 9 of the present application, in conjunction with the specification at page 14, lines 12-16, surfaces 30 are formed with convex gripping surfaces. It is these convex gripping surfaces that have at least one gripping structure to further provide increased gripping ability to the applicator. Clearly, rear portions 32 of the Lichstein patent do not have one or more gripping structures, as claimed.

Applicants respectfully submit that Lichstein fails to disclose or suggest the tampon applicator recited in claim 13, and claims 14 and 16 through 18, which depend either directly or indirectly from claim 13.

Independent claim 19 is directed to a tampon applicator having a barrel adapted to house a pledget therein and to receive a plunger therein. The barrel has a finger grip area adapted to partially house and engage the plunger. The finger grip area has at least one concave gripping surface with at least one gripping structure. The at least one gripping structure is selected from the group consisting of embossments, slits, perforations, lances, pressure sensitive adhesives, and any combinations thereof. The finger grip has a reduced diameter relative to the barrel. The at least one concave gripping surface and the at least one gripping structure provide gripping ability to overcome ejection forces applied to the barrel by the pledget and/or plunger.

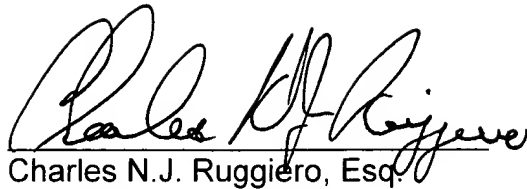
Applicants maintain that Lichstein fails to disclose a tampon applicator with a finger grip area having at least one concave gripping surface with at least one gripping structure selected from the claimed Markush group. Again, contrary to the Action's contention, surfaces 30 and 34, at rear portion 32 in Lichstein (defined at col. 4, lines 14-24, as relied on by the Action), do not define a concave gripping surface, as recited in claim 19.

Therefore, Applicants respectfully submit that Lichstein fails to disclose or suggest the tampon applicator recited in claim 19, and claims 20, 22 and 23, which depend either directly or indirectly from claim 19.

Overall, Applicants respectfully submit that Lichstein fails to disclose or suggest the claimed tampon applicator. As such, reconsideration and withdrawal of the §102(b) rejection of claims 1, 2, 4, 5, 7, 9 through 14, 16 through 18, 19, 20, 22 and 23 is respectfully requested.

It is respectfully submitted that claims 1 through 5, 7 through 23 and 25 through 28 are patentably distinguishable over Lichstein. Therefore, Applicants respectfully request reconsideration and withdrawal of the rejections of these claims and passage of this application to allowance.

July 28, 2003

A handwritten signature in black ink, appearing to read "Charles N.J. Ruggiero". The signature is fluid and cursive, with the first name "Charles" being more legible than the last name "Ruggiero".

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